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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re Applications of)	MM Docket No. 93-107
DAVID A. RINGER)	File No. BPH-911230MA
ASF BROADCASTING CORPORATION)	File No. BPH-911230MB
WILBURN INDUSTRIES, INC.)	File No. BPH-911230MC
SHELLEE F. DAVIS)	File No. BPH-911231MA
OHIO RADIO ASSOCIATES, INC.)	File No. BPH-911231MC

For Construction Permit
For New FM Radio Station at
Westerville, Ohio

To: The Review Board

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EXCEPTIONS AND BRIEF

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December 20, 1993

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Summary/Statement of the Case

In his Initial Decision below, the Judge granted the application of Shellee F. Davis ("Davis") and denied the applications of Wilburn Industries, Inc. ("Wilburn"), David A. Ringer ("Ringer"), ASF Broadcasting Corporation ("ASF") and Ohio Radio Association, Inc. ("ORA") under the standard comparative issue. The Judge's conclusions however, must be reversed (except with regard to ORA which claimed and received no integration credit), because the record below shows that ASF, Davis and Ringer should not have received the 100% integration credit granted by the Judge. The record shows with regard to ASF Broadcasting Corporation ("ASF") that its non-voting shareholder will be able to control or influence the conduct of ASF's business as a practical matter and that there is no de jure limitation on his power or activities. Davis intends to sell her current business in order to meet her integration commitment, but is legally precluded from assigning the contracts on which her business is based. Ringer's claims to credit have been made with a reckless disregard for truth, rendering his integration pledge, itself, unworthy of belief. Only Wilburn, therefore, merits credit for the 100% integration of its ownership into management.

The comparative issue would not in any event be dispositive in the case of Davis, Ringer and ASF because, were any of these applicants favored, further hearings on its basic financial qualifications would need to be conducted on remand. In denying

petitions to add such issues, particularly in the case of Wilburn's Petition to Enlarge Issues against Davis, the Judge failed to even address the facts and precedent which mandated the addition of such issues.

Specifically, Davis's deposition testimony revealed that her financial certification was based on no more than an "accommodation letter" provided by a banker who is a personal acquaintance and who hopes to secure business from her in the future. The letter was issued by the bank without any discussion of her business plan, the value of the property to be acquired with the loan, or the bank's credit criteria. Moreover, the plans and existing personal resources revealed in the course of discovery show that Davis could not reasonably expect to satisfy the bank's collateral requirements and has not agreed to meet such requirements. With regard to ASF and Ringer, deposition testimony revealed that both sought comparative preferences on the basis of their proposed coverage, but failed to include the equipment which would produce such coverage in their respective cost estimates. Ringer's testimony also revealed that he did not include programming costs in his budget because he assumed, without support, that his programming will be free. In these circumstances, financial issues should have been added against all three applicants and, if one of these applicants is deemed superior under the comparative issue, such an issue will have to be resolved on remand.

Questions of Law Presented

1. Does a bank letter provide reasonable assurance that a bank loan will be available where the applicant and bank have not discussed a business plan or budget, the value or potential income of the station, the bank's credit criteria or what collateral might be required to secure the loan?
2. Is the specification of financial issues required when an applicant has omitted a significant and expensive item of equipment (i.e., a directional antenna) from its cost estimates?
3. May an applicant be given credit for integration where her integration proposal depends on the sale of a business which she may not be able to sell in view of prior contractual restrictions on such sale?
4. May the Commission refuse to accord any integration credit to a party whose representations about his qualitative integration credit are repeatedly found to be false and misleading?
5. Should the Commission deny 100% integration credit to an applicant with a 25% voting shareholder and a 75% non-voting shareholder where the majority owner will put up all of the funds needed to construct and operate the station, has managed each of his other stations, and has no limits upon his future involvement with station operations?

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ARGUMENT

I. Introduction.

In his Initial Decision, FCC 93D-22, released November 18, 1993 (the "ID"), Administrative Law Judge Walter C. Miller granted the application of Shellee F. Davis ("Davis") to construct a new FM station at Westerville, Ohio, to replace former Station WBBY(FM). Resolving the proceeding solely under the standard comparative issue, he also thereupon denied the mutually-exclusive applications of Wilburn Industries, Inc. ("Wilburn"), David A. Ringer ("Ringer"), ASF Broadcasting Corporation ("ASF") and Ohio Radio Associates, Inc. ("ORA").

A review of the record below, however, reveals that the Judge reached the conclusion he did only by ignoring the material evidence advanced at hearing under the comparative issue. More importantly, it will demonstrate, as well, that the Judge refused to consider petitions to enlarge issues which timely raised financial qualifying issues of critical decisional significance. He did so contrary to Commission policy and Commission precedent, and in defiance of prior rulings by the Review Board which repeatedly have made it clear that fundamental public interest questions must be addressed when they are raised. See, Mableton Broadcasting Company, Inc., 5 FCC Rcd 6314 (Rev. Bd. 1990); Shawn Phalen, 5 FCC Rcd 53 (Rev. Bd. 1990).

The record further establishes that Wilburn is a fully-qualified applicant which has no other broadcast interests and which proposes to integrate 100% of its voting ownership into the day-to-day management of its station. ORA seeks no integration credit and offers no sound reason to grant its application under the comparative issue. The other three applicants which seek integration credit -- Davis, ASF and Ringer -- do not in fact deserve such credit and thus rank well below Wilburn once the record evidence is evaluated. Moreover, none of the three may be issued a permit until a hearing on remand establishes that such applicant has the basic financial qualifications to receive one from the Commission. As will be shown below, Wilburn is comparatively superior to each of the other applicants and is the only one meriting integration credit whose application can be granted without further hearings.

II. Davis.

A. Financial Qualifications. In a pleading filed 15 days after the transcript of her deposition and documents first identified in her deposition had been obtained, Wilburn demonstrated that Davis premised her financial certification on no more than an "accommodation letter" obtained from a banker who was her friend, who had been seeking the account of her current business for some time, and who knew nothing about the basic facts needed by a bank before it can seriously consider a loan

such as that purportedly relied upon by Davis. Indeed, the banker's letter was no more than a fill-in-the-blanks copy of the draft provided to him by Davis, which made no sense in the context of Davis's actual business plan.¹ Yet, when all of these matters were set forth before him, the Judge denied Wilburn's August 23, 1993 Petition to Enlarge Issues without even addressing Wilburn's arguments.

Specifically, Wilburn's Petition showed that in late December, 1991, Davis decided that, in order to construct and operate her proposed station for three months, she would require a bank loan of \$250,000.² She therefore contacted two local banks, BancOhio National Bank ("BancOhio") and Huntington National Bank ("Huntington Bank"), requesting a letter which on its face would provide her with reasonable assurance of a loan commitment from that institution. In each instance, she sent via facsimile: (1) a letter requesting "a letter of commitment for a potential loan", (2) a personal financial statement, and (3) a sample bank letter provided to her by communications counsel. She provided no budget or business plan, never discussed the

¹ Wilburn also pointed out that when another bank sought additional information so that it could evaluate her proposal before issuing the letter she wanted, she immediately dropped her effort to obtain a letter from that Bank.

² Pertinent portions of Davis's deposition and copies of documents were attached to Wilburn's August 23, 1993 Petition and cited therein. References herein will be to the pages of such Petition where such arguments and citations appear.

projected profitability of her proposed venture or the monetary value of the proposed station, never learned of the banks' credit criteria, and never discussed either the terms of a projected loan or the collateral which might be required in connection with such a loan. (Petition, pp. 2-3.)

BancOhio is the bank which holds the account for Davis's current business, Britt Business Systems, Inc. In response to her letter (accompanied by her financial statement and sample letter), Paul Casey, Manager of the bank, advised her that he could not provide her with the letter she requested without evaluating such request "based on all of BancOhio's loan criteria". He assured her, however, that he would be interested in working with her by "applying BancOhio's loan underwriting standards during each step of the FCC approval process". Davis, however, then decided not to pursue the matter with BancOhio. (Petition, p. 3.)

Rather, Davis chose to rely on a letter she received from Ralph Frasier, a Vice President of Huntington Bank, who is a personal acquaintance and who had "been wanting my business for a long time" and "been after me for, you know, bringing the Britt account over to Huntington".³ Filling in blanks where specific

³ Britt Business Systems, Inc. has its account at BancOhio. Although Davis maintains a money market account at Huntington Bank, that is not her main personal account. Thus, although Frasier may have had (continued...)

numbers were called for, Frasier essentially copied the language concerning the loan which had been set forth in her counsel's model letter. In particular, Frasier recited that: "Collateral for the loan will be the physical and intangible assets of the station, and may include your secured personal commitment."
(Petition, p. 4.)

Prior to reciting the terms of the possible loan (which terms, as noted above, had not previously been discussed with Davis), Frasier also added language of his own, stating that his letter was based on "our understanding concerning the value of the project," but that any loan would be conditioned upon whether "appropriate management and staff are acquired to run the station". (Id.)

When questioned about this letter, Davis testified that she never discussed a business plan or the bank's credit criteria with Frasier. When questioned in particular about the bank's collateral requirements, she also acknowledged that she intends to lease her studios, offices and transmission facilities from Mid-Ohio Communications, Inc., the former licensee of WBBY(FM). She therefore planned to have few, if any, physical assets to pledge as security for the projected \$250,000 loan. She also

"sufficient to infer that the lender is thoroughly familiar with the borrower's assets, credit history, current business plan and similar data." See, Scioto Broadcasters, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990).

could not identify any "intangible assets" which the station will have other than, perhaps, accounts receivable.⁴ Finally, although Huntington Bank may require her secured personal commitment as collateral for the loan, Davis stated that, "I guess if the bank said I had to do it [pledge her personal property to secure the loan], then I would have to make a decision whether I was going to do it or not". That is, she has not agreed to satisfy that condition if required to do so by the bank. (Petition, P. 5.)

With regard to the language added by Frasier, Davis testified that she never discussed the projected value of the station with Frasier and understands that he was merely referring to the value of the station's service to the community. Other than mentioning that she planned to manage the station, she also never discussed her staffing plans with Frasier. (Petition, p. 6.)

In March, 1992, Davis decided that she might require more money than she initially had anticipated, and so asked Frasier to issue her a second letter, for \$350,000, which he did. This

⁴ Davis cannot recall ever discussing with Frasier what such "intangible assets" might be, but stated that, "I guess I would assume" that the term may encompass the station's accounts receivable. (*Id.*). Even if the term was intended to mean what Davis now speculates, it is obvious that a station unable to meet its periodic bank payments would not have collectable accounts receivable sufficient to satisfy the entire loan upon foreclosure.

letter, dated March 9, 1992, was an exact copy of the earlier letter, except for a loan amount which was increased by \$100,000. Once again, there was no discussion of a budget or business plan, no exchange of information as to the projected value or income of the station, and no inquiry or explanation of the bank's loan criteria: Davis merely asked Frasier for a letter specifying additional funds and he supplied such letter. Notably, at this point (and even if Davis eventually agrees to personally guarantee such a loan), the amount of the loan would exceed the total combined net worth of Davis and her husband as stated on the financial statement which she had provided to Frasier.

Citing Shawn Phalen, supra, Wilburn's Petition contended that these undisputed facts raise a serious and substantial issue whether Davis is financially qualified pursuant to the Commission standards so reasonably articulated in Scioto Broadcasters, supra.⁵ In particular, Wilburn noted that Davis chose not to seek a letter from BancOhio, the bank which has an established relationship with her, after it indicated that it would be willing to issue the required letter once it received the data necessary to make an informed judgment on the matter. Rather, she turned to an acquaintance at Huntington Bank, who she knew

⁵ Wilburn also pointed out that, as the Commission has recognized, a bank cannot be expected to make a business loan on the basis of no more than the prospective borrower's personal financial statement. Isis Broadcast Group, 7 FCC Rcd 5125, 5129 (Rev. Bd. 1992).

had long been interested in obtaining the account of her current business as well as any future business endeavor she might pursue. He then issued a letter, based on a model provided to him by Davis, with no examination of the factors, such as a business plan, which a bank ordinarily must consider before making a loan to a prospective borrower. Indeed, Davis made no effort even to ascertain what the bank's credit criteria might be. She also made no effort to supply the bank with the necessary information, such as her staffing plans, after that criterion was identified by the bank in its letter. Where the bank identified other factors, referring to the use of the station's "intangible assets" as security, she did not know what such assets might be and made no effort to find out.

Furthermore, Wilburn explained that an examination of the pertinent facts establishes that the letter provided to Davis by Frasier was issued without regard to Davis's actual plans or financial situation. Following the model provided to him, Frasier thus stated that the putative loan would be secured by the station's physical assets, but Davis would not possess such assets because she intends to lease the real estate and equipment to be used by her proposed station. Similarly, Frasier's letters recited that Davis might be required to pledge her own assets as security, but the only real estate of significant value already is heavily mortgaged, while her entire net worth (together with

that of her husband) does not equal the value of the loan specified in Frasier's second letter.

Finally, Wilburn pointed out that even if (arguendo) the bank letter were valid, Davis has not agreed to provide the collateral which the bank may require to secure the contemplated loan. In these circumstances, where a bank may require the principal in an application to personally guarantee repayment of a loan and such individual has not agreed to accept such condition, the Commission has held that the bank letter itself does not provide reasonable assurance of financing. Vernon Broadcasting Co., 12 FCC 2d 946 (1968).

Notwithstanding the facts set forth in Wilburn's Petition, and the Board's prior rulings in virtually identical circumstances where letters seemingly adequate on their face were found to be wholly lacking in substance,⁶ the Judge denied Wilburn's Petition on procedural and substantive grounds. Memorandum Opinion and Order, FCC 93M-609, released September 23, 1993. First, he held that the Petition was late-filed because Wilburn had received a copy of Davis's bank letter on May 10, 1993, and therefore should have been able to file its Petition "by May 9, 1993." In so ruling, he ignored the fact that the evidence relied upon by Wilburn was not evident on the face of

⁶ See, Mableton Broadcasting Company, Inc., supra; Shawn Phalen, supra.

such letter and was only discovered in the course of her later depositions (and in documents whose existence was first revealed at her deposition and thereafter produced).

From a substantive standpoint, the Judge did not even address Wilburn's argument -- or conduct any analysis of the testimony and letters at issue. He merely recited that the bank letter "qualifies as a reasonable assurance letter" and then devoted the remainder of his abbreviated discussion to calculations which supported the irrelevant conclusion that the sum set forth in the letter plus Davis's personal investment would exceed her estimated costs of construction and initial operations. That is, the Judge denied Wilburn's Petition without addressing the question before him and amidst every indication that he understood neither Wilburn's contentions nor the basic Commission policy upon which such contentions were based. At this point, therefore, the Board has no choice other than to itself review Wilburn's Petition and the evidence adduced in discovery, and to thereupon remand this proceeding for further hearings pursuant to a basic financial qualifications issue against Davis.

B. Comparative Qualifications. The remand discussed above would be required, however, only if Davis is accorded the 100% integration credit she claims. In that regard, too, the Judge ignored the evidence before him and refused to even acknowledge

-- much less address and analyze -- the arguments directed to such evidence. Thus, as discussed above, Davis presently owns and operates Britt Business Systems, Inc. ("Britt"), which distributes office equipment for Panasonic Industrial Company ("Panasonic") and Xerox Corporation ("Xerox"). (Davis Exh. 1, p. 2; Tr. 377.) To effectuate her integration proposal in this proceeding, she intends to sell Britt for its market value, and has no plans other than to sell it. (Davis Exh. 1, p. 1; Tr. 386, 389.) The value in Britt is its authority to sell or lease Panasonic and Xerox equipment pursuant to contracts with those companies, and she believes that she will be able to assign these rights to a prospective purchaser. (Tr. 389-390, 393, 397.) She has not tried to market Britt, however, and -- contrary to her assumption -- her contracts with Panasonic and Xerox are not freely assignable. (Ringer Exh. 5, para. 16; Exh. 6, para L 1.1; Tr. 394-396, 398.) To the extent that Britt's contract with Xerox recites that such contract may be assigned only if Xerox gives its prior consent, Davis has not received such consent and, indeed, has never explored the matter with that supplier. (Tr. 398.)

In short, Davis stated that she will sell her existing business, but was unaware that such sale is proscribed by her contracts, so that she may not do so without the concurrence of her suppliers. She therefore has not determined that she can sell her business despite the restrictive language of her

contracts, nor may she assume without support that the express language of a contract will be waived or disregarded. Cf., Swann Broadcasting Limited, 6 FCC Rcd. 17, 68 RR 2d 1164 (Rev. Bd. 1990); Washoe Shoshone Broadcasting, 3 FCC Rcd. 3948, 64 RR 2d 1748 (Rev. Bd. 1988). Furthermore, she has not testified that she will give up her investment in Britt if she cannot sell it, and it therefore cannot be concluded that she ultimately will terminate her current, successful business for a new endeavor.⁷ Her integration proposal cannot be deemed firm and unequivocal in such circumstances, and she therefore cannot be granted the 100% integration credit she now seeks.

III. Ringer and ASF.

A. Financial Qualifications. The Judge compounded his errors below with regard to David by denying the substantially similar petitions to enlarge issues against Ringer and ASF which were filed by Davis and ORA. Both Ringer and ASF have proposed to lease the existing facilities of former station WBBY(FM), but both ASF and Ringer also have sought comparative credit for the greater coverage which may be obtained by use of a directional antenna. As properly pointed out by the petitioners, however, WBBY(FM) had an omnidirectional antenna, and neither Ringer nor

⁷ It also cannot be assumed that she will merely abandon her old business. Britt had gross revenues in excess of \$1,400,000 in 1992, and she has no idea of what the potential revenues of her proposed station may be. (Tr. 377, 381-385.)

ASF included the substantial price of a new directional antenna in their respective budgets, rendering their cost estimates fundamentally flawed. See, Motion to Enlarge Issues Against ASF, filed August 20, 1993, by Davis, and Motion to Enlarge Issues Against Ringer, filed August 18, 1993, by ORA. Ringer's flawed proposal also failed to budget for programming -- on the grounds, alleged by Ringer, that he believed that he could get programming for free (although he had not actually determined that he could do so). For obvious reasons, set forth in the Petitions denied by the Judge, qualifying financial issues should have been added against each applicant. If either applicant is deemed to be the best qualified under the comparative issue, therefore, the application of such applicant cannot be granted absent further hearings to determine whether that applicant has the basic financial qualifications to become a Commission licensee.

B. Ringer's Comparative Qualifications. In point of fact, Ringer's basic financial qualifications need not be assessed below, because no credence can be given to his integration proposal. A review of his direct written testimony concerning such proposal, his testimony on the matter pursuant to cross-examination at hearing, and his later claims in his October 25, 1993 Proposed Findings of Fact reveals that he will say whatever he deems necessary to obtain unwarranted comparative credit, even where such claims are untrue. The initial evidence of this reckless disregard for the truth was revealed at hearing, where

he claimed to reside within the service area of his proposed station prior to the time that he filed his application, but later conceded that he did not actually so reside. (Ringer Exh. 2, p. 1; Tr. 144-145, 276-277.) While that misstatement, standing alone, may not have rendered his integration proposal unworthy of credit, Ringer has since done far more to impeach his own credibility. He claimed credit for civic activities in his direct written testimony (Ringer Exh. 2, p. 1), revealed in the course of his cross examination that such activities did not take place within his service area (because he did not reside in such area) (Tr. 144-145, 276-277), and still claimed such credit in the Proposed Findings he submitted to the Judge (See Ringer Findings at p. 3). Similarly, he claimed credit for significant broadcast experience (including managerial experience and experience after 1972) in his direct written testimony, revealed in cross examination that he does not have such experience, and still claimed such credit in his submission to the Judge. (Ringer Exh. 2, pp. 1-2; Tr. 154-155, 158-159; Ringer Findings, pp. 3-4.) In addition, he claims that he will install emergency generators although his proposed budget revealed that he never planned to acquire such equipment; he claims that he will withdraw from his existing full-time business without explaining how he will do so; and he has represented that he would sell his

shares in an existing station to his fellow shareholders before even discussing the matter with them. (Tr. 145-148.)⁸

In view of Ringer's repeated, continuing misstatements, extending to his post-hearing submission of his Findings to the Judge, it must be concluded that none of his claims can be trusted. In these circumstances, it is not necessary to conclude that he has engaged in disqualifying misrepresentations: He nevertheless may be denied comparative credit on the grounds that he has provided ample proof that his claims relating to his proposed integration cannot be credited.

C. ASF's Comparative Qualifications. Whereas the Judge ignored critical evidence which should have led him to conclude that Davis and Ringer should not be accorded integration credit, the Judge recognized the fatal flaws inherent in ASF's presentation at footnote 4 in his ID and still granted ASF the 100% integration credit which it has claimed.⁹ His conclusion

⁸ He also states that he will be relieved of all obligations to the bank whose loan to the station he has guaranteed. He assumes this, however, while providing no indication that the bank will release him from this obligation, or that he even has discussed the matter with the bank.

⁹ The Judge did properly impose a diversification demerit against ASF in light of the other broadcast interests held by ASF's putative non-voting shareholder. A correction of his ruling with regard to integration may be necessary, however, to sustain this demerit.

with regard to ASF's integration credit therefore may be reversed on the basis of the finding of fact already included in the ID.

To remove any doubt as to the matter, however, it should also be recognized that yet additional evidence establishes that, at best, ASF merits credit for the integration of 25% of its attributable ownership into management. Specifically, the record shows that ASF is a corporation with two shareholders: Ardeth S. Frizzell, who owns 250 shares of voting stock, and Thomas J. Beauvais, who holds 750 shares of non-voting stock. (ASF Exh. 1.)

Thomas Beauvais holds ownership interests in two existing radio stations, WBTZ(FM), Pinconning, Michigan, and WFGR(FM), Grand Rapids, Michigan. (ASF Exh. 2.) He was General Manager of WBTZ(FM) from the time he and his co-owners obtained the station until the corporate licensee turned over day-to-day operations to another entity pursuant to an LMA (local management agreement), and has been employed as General Manager of WBTZ(FM) since the time he and his co-owners obtained the license of that second facility. (Tr. 246-247.)¹⁰

¹⁰ Beauvais's ownership of these stations, but not his active management role, was revealed in ASF's direct written case.

The Shareholders Agreement between Frizzell and Beauvais provides that he alone will provide funds to construct and operate ASF's proposed station and that, as a practical matter, he will bear the entire cost of prosecuting its application from the hearing session onward. (Wilburn Exh. 3; Tr. 182-183, 185-187, 188.)¹¹ He agreed to do so after meeting Frizzell once, for one hour over dinner at a restaurant, shortly before the filing deadline. (Tr. 191-193.) During their meeting, they did not discuss the business of the station, a proposed budget, the format, or even how much he would invest and how his money would be used. (Tr. 198-199, 203, 205.) Aside from discussing the percentage of equity she would hold, they also never spoke about the terms of their business arrangement. (Tr. 198, 206.) She merely took an agreement which had been prepared for a previous Beauvais project and, aside from raising her percentage from 20% to 25%, had her attorney copy it. (Tr. 194-195.)

At their single meeting, Frizzell and Beauvais did not discuss any limits on Beauvais's later involvement in station operations. (Tr. 208.) The Shareholders' Agreement which they signed shortly thereafter contains no restrictions concerning his

¹¹ Beauvais has agreed to invest or lend (Frizzell does not know which) up to \$196,000. (Tr. 187-188, 191.) Frizzell already has contributed \$12,000, the only amount required of her. (Tr. 182-183, 188.) She also is totally dependent on Beauvais's willingness to provide the funds necessary to build and operate the station, because she herself has less than \$25,000 in total available funds and cannot otherwise hope to finance the project. (Tr. 178-179, 181, 209.)

future employment at the station, his serving as an independent contractor or agent, his ability to transact business in the name of the corporation, his participation beyond providing funds or securing loans, or communicating his wishes about the day-to-day operations of the station. (Wilburn Exh. 3; Tr. 206-207.)

In light of this record, the Judge should have concluded that ownership in ASF must be attributed to its 75% shareholder, Thomas Beauvais, as well as to Ardeth Frizzell. His financial dominance, the brief and insubstantial meeting between him and Ardeth Frizzell which preceded his agreement to provide essentially all of the funding for the project, the failure to even discuss any limitation on his future involvement in the station's business affairs, and the complete absence of any such restrictions in their Shareholders' Agreement -- all mandate the conclusion that, at best, ASF may be accorded 25% integration credit for Frizzell's proposal to serve as its General Manager. Beauvais's past pattern of ownership/management and the use of a previously-prepared, non-negotiated agreement between Beauvais and Frizzell further buttress this conclusion.

IV. Conclusion.

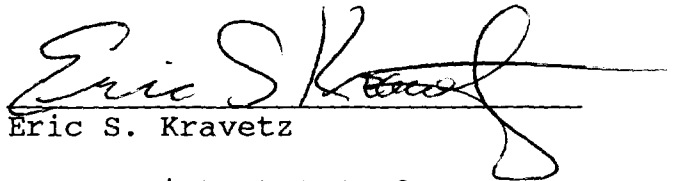
A full and fair review of the record below will establish that, as held by the Judge, Wilburn should be given comparative credit for integrating 100% of its attributable ownership into

manage. ORA claims no credit for integration; ASF merits, at most, credit for 25% integration (which is more than offset by a dispositive demerit under the diversification criterion); and Davis and Ringer deserve no credit for their integration proposals in view of the evidence adduced at hearing. If Davis, Ringer or ASF are accorded the integration credit they seek and deemed superior to Wilburn due to qualitative factors, the application of that party must thereupon be remanded for further hearings under a basic financial qualifications issue.

Respectfully submitted,

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December 20, 1993